

TCEQ Docket No. 2006-0200-MWD

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In the Matter of the Application of	§	Before the	
HUDSON HARBOR, LTD.	§	TEXAS COMMISSION ON	CHIEF CLERKS OFFICE
For Renewal of Permit No. WQ0014227001	§	ENVIRONMENTAL QUALITY	

APPLICANT'S RESPONSE TO HEARING REQUEST

I. Introduction

Applicant filed its Application for Renewal of Permit on October 29, 2004. This Application was declared administratively complete on April 27, 2005. The Notice of Receipt and Intent to Obtain a Water Quality Permit was published on June 2, 2005 in the *Austin American Statesman*. A Notice of Application and Preliminary Decision for a Water Quality Permit was published on November 2, 2005 in the *Austin American Statesman*. The public comment period ended on December 2, 2005. The Executive Director's Response to Public Comment was filed on January 18, 2006. On May 3, 2006, the Executive Director requested that the matter be remanded from the May 31, 2006 Agenda in order to require the Applicant to demonstrate need for the Application. The Applicant has submitted correspondence demonstrating continued need for the proposed facility.

This Application is for a permit to discharge treated domestic wastewater at a daily average flow not to exceed 14,000 gallons per day via a subsurface drip irrigation of 3.2 acres of land at an application rate not to exceed .1 gallon per square foot per day. The Applicant has obtained a plat of Lot 1, Hudson Harbor Subdivision, a 10.61 acre lot located at 6409 Hudson Bend Road, Austin, Travis County, Texas to initiate the entitlement of the Property for this Project development. The Applicant also received a site development permit from the City of Austin, Travis County and ESD No. 6 authorizing the development of a multi-story residential condominium building. The Applicant has procured architectural plans for a 108-unit condominium in a single condominium tower with a varying range of bedroom counts and square foot plans, and has designed, at the request of ESD No. 6, an under building water storage area for fire suppression. Hundreds of thousands of dollars have gone into the engineered site plan for the Property, the design of the fire suppression system, the architectural plans for the residential tower, and the permitting of the wastewater disposal permit.

There is no centralized wastewater system available to serve this Project. The Project has, subsequent to the issuance of the Permit, been annexed into the CCN of Travis County Water District No. 17 (the "District"), which has acknowledged that it does not have the present ability to serve this Project. Its closest facilities are currently several miles away from the subject site on the opposite side of the Mansfield Dam. This Project cannot be built without the subject Permit. Applicant has invested hundreds of thousands of dollars in entitling the site for the development of the residential tower in reliance on the wastewater permit and consequently has a demonstrated continued need for the proposed facility.

After the matter was remanded at the request of the Executive Director on May 31, 2006 for a demonstration of need, Applicant sought to negotiate a settlement with the District, which had filed an objection to the renewal of the Permit. Applicant met with the General Manager and its General Counsel on August 1, 2006 to negotiate the terms of a settlement agreement. Notwithstanding the fact that Applicant offered to transfer and assign the Permit upon construction of the wastewater facility to the District, Applicant and the District were unable to reach settlement.

II. Right to a Contested Case Hearing

Applicant would respectfully submit there is no right to a contested case hearing under Chapter 26, Texas Water Code in the instant case because the Applicant is not applying to:

- A. Increase in any way, shape, or form the quantity of waste authorized to be discharged; and Applicant is not changing in any way the pattern of place of discharge;
- B. Alter the treatment parameters for the quality of waste discharged;
- C. Avoid opportunity for public meeting which has already been given with the original permit application. No change is being requested in the Permit by this Renewal Application;
- D. Avoid consultation and response to all timely received and significant public comment which has been given; and
- E. Alter the terms of the Permit. There is nothing in the Applicant's compliance history the previous five years which would raise issues regarding the Applicant's ability to comply with the material term of the Permit. The facility has not yet been built and the Applicant has no history of compliance or non-compliance.

III. Response to Request

Applicant does not dispute that the District is an affected person. However, the District raises no issues that are relevant and material to the decision on the Application.

First, Applicant is not a retail public utility. It plans to provide service only to buildings located on the subject 10-acre lot described as Lot 1, Hudson Harbor Subdivision. No other service location will be authorized by the draft Permit. Consequently, there is no material issue of non-compliance with the protected boundaries of the District's certified wastewater service area pursuant to 30 TAC § 291.101(b). Furthermore, the District did not obtain CCN 20943 until December 8, 2003. Applicant's wastewater permit was originally issued on May 15, 2001.

Second, the District's question of the need for the Permit is disingenuous. The District offered no suggestion as to how it could serve the Applicant's Project and has privately conceded that its closest wastewater treatment facilities are more than 3-miles from the Property and located on the opposite side of Mansfield Dam. Applicant has spent well more than \$1,000,000 acquiring the 10-acre site; platting the site in an approved recorded subdivision; securing engineered site development plan approval for the residential development from the City of Austin, Travis County and Travis County ESD No. 6; designing an under-building fire suppression system with storage

facility and booster pumps to augment the water service currently available from the District; and procuring architectural plans for the condominium tower to be built on the site. All the engineered site planning and architectural planning and engineered wastewater system plans were done in reliance on the issued wastewater Permit. Without the Permit, the Project cannot be built because there is no feasible alternative wastewater service available and the District is not capable of providing that service now and has never made any serious offer to provide such service to the Project.

Third, the District's current rules and policies would require the Applicant to construct all off-site facilities necessary to serve the single building, single lot project development, which would entail construction of more than 3-miles of transmission main to the nearest District facilities on the opposite shore of the Colorado River. Service from the District is not reasonably and practically available. Moreover, Applicant has offered to transfer its Permit to the District once the Project is built, so that the District can take over management and operation of the facility at its discretion and/or take the system offline when collective sewer facilities from the District become available in the future.

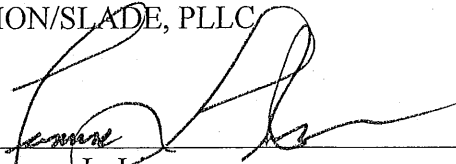
IV. Summary

In summary, the District has not shown that it is entitled to a contested case hearing pursuant to 30 TAC §55.201(i). OPIC actually concurs with the Executive Director that no right to a hearing exists on the Renewal Permit, because the Application satisfies the requirements of 30 TAC §55.201(i). There is not dispute from any party that no right to hearing exists.

Applicant concurs with the Executive Director that the issue "whether the District will be adversely or affected by the renewal of the Applicant's Permit because of the development of a new, privately funded facility within the District's CCN and detrimental to the District's plans to provide centralized service from an establish retail public utility" is not referable because it is not relevant and material to a decision on this Application. Notwithstanding OPIC's recommendation, this Permit Application does not present an appropriate case to consider regionalization issues on a 10-acre, single user private wastewater system where no right to hearing exists as described in Texas Water Code §26.02.D.

Finally, on the issue of the need for the facility, the District has offered no evidence of its ability to serve the facility. The Applicant has offered to transfer the Permit to the District upon completion of the facility. If the District could feasibly provide service to the subject Project, it would have so stated. Instead, the District merely stated that the Applicant should request service "under the District's current rules and policies". These rules and policies require all off-site facilities to be built to the District's specifications at the Applicant's sole cost and expense and dedicated to the District. This would involve more than 3-miles of off-site transmission main, lift stations and force mains.

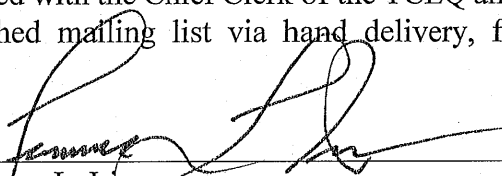
Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that on June 25, 2007 the original and eleven true and correct copies of the Applicant's Response to Hearing Request were filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, or by deposit in the U.S. Mail.



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